## REMARKS

Applicants' undersigned attorney thanks the Examiner for his comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the following remarks. Currently, Claims 1, 2, 4-22, and 49-60 are pending, with Claims 49-60 withdrawn from consideration.

### Claim Rejections - 35 U.S.C. §102

The rejection of Claims 1, 2, 4-11 and 17-22 under 35 U.S.C. §102(a) as being anticipated by Christoffel et al. (U.S. Patent No. 6,582,412, hereinafter "Christoffel") is respectfully traversed. by virtue of the impropriety of this rejection.

More particularly, **Christoffel is not prior art under 35 U.S.C. §102(a).** According to MPEP 706.02(a)(II)(C):

> For 35 U.S.C. 102(a) to apply, the reference must have a publication date ***earlier*** in time than the effective filing date of the application, and must not be applicant's own work. (emphasis added)

The Christoffel reference has a publication date of 04 July 2002, which is ***later*** in time than the effective filing date of the subject application (13 December 2001). Therefore, 35 U.S.C. §102(a) does not apply to the Christoffel reference with respect to the subject application.

Furthermore, as explained in Applicants' previously filed responses, Applicants' claims are patentably distinguishable from the Christoffel reference. Despite the Examiner's continued insistence that Applicants' previous amendments to the claims (i.e., the addition of the "liner" limitation) and the addition of Claims 49-60 constituted "an invention that is independent or distinct from the invention originally claimed," Applicants maintain that the previous amendments are consistent with Applicants' election.

The restriction requirement conveyed by telephone on 18 July 2003 and set forth in the Office Action mailed 04 August 2003 divided the original claims into two groups, namely **(I) claims drawn to a disposable garment free of absorbent material,** and (II) claims drawn to an absorbent garment. Applicants elected the first group, namely claims drawn to a disposable garment free of absorbent

material. The amendments to Claims 1, 2, and 4-22, and new Claims 49-60 are consistent with Applicants' election. More particularly, **each of the pending claims (Claims 1, 2, 4-22, and 49-60) is drawn to a disposable garment free of absorbent material.** Furthermore, each of the pending claims has been ***narrowed*** by limiting the ***type*** of garment to a liner. Because the amendments to Claims 1, 2, and 4-22, and new Claims 49-60 are consistent with Applicants' election, Applicants continue to traverse the Examiner's constructive election of the original presentation of the claims over the amended claims and the addition of Claims 49-60.

As recited in Claim 1, Applicants' claimed invention is directed to a stand-alone disposable garment, which, more particularly, is a swimwear liner worn beneath swimwear. The garment is "stand-alone" in the sense that it exists as an independent product, unattached to the garment under which it is worn, as described on page 13, lines 1-7.

The Examiner has expressed confusion over Applicants' claimed invention. It appears that the term "stand-alone" is unclear to the Examiner, since the Examiner states that:

> It is not clear how the item can be a "stand alone garment" as well as a "liner" or "swimwear liner", both terms implying layering of the garment with another item, which would clearly make the item not "stand alone".

The terms "stand-alone" and "liner" are not mutually exclusive. A liner may be provided separate from the garment under which it is to be worn, yet may still be worn beneath the garment and be considered "stand-alone," as is the case with Applicants' claimed invention. Applicants' usage of these terms is consistent with the ordinary meaning of these terms.

The specification of the present application unambiguously describes several embodiments of the liner, wherein the liner may be either a stand-alone disposable pant liner ***or*** a layer incorporated within a disposable swimpant. Surely this distinction must have been clear to the Examiner when he set forth this distinction in the Restriction Requirement, in response to which Applicants elected the stand-alone disposable pant liner.

Christoffel fails to disclose a stand-alone disposable garment, particularly a swimwear liner that is worn beneath swimwear and is substantially free of an absorbent assembly and substantially free of liquid-impermeable material. Instead, Christoffel discloses a swimsuit that either includes an absorbent assembly, or a stand-alone swimsuit garment that may be worn ***over*** an absorbent garment (Col. 8, lines 43-48).

The Examiner states that there is nothing in the structure of Christoffel that would preclude the swimsuit from being a swimwear liner. To the contrary, the structure of Christoffel ***is*** a swimwear garment. Therefore, it would be completely illogical to wear the structure of Christoffel (i.e., a swimwear garment) beneath another swimwear garment.

The Examiner further states that swimsuits are often worn underneath other clothing including other swimsuits. This statement, in itself, is puzzling. Christoffel fails to disclose or suggest the applicability of the swimsuit therein to be worn beneath another swimsuit. Furthermore, Applicants are unaware of ***any*** swimsuits that are intended to be worn underneath other swimsuits.

For at least the reasons presented above, Applicants respectfully submit that Claim 1 is not anticipated by Christoffel. Because Claims 2, 4-11, and 17-22 depend from Claim 1, these claims are also not anticipated by Christoffel. Thus, Applicants respectfully request withdrawal of this rejection.

**Claim Rejections - 35 U.S.C. §103**

The rejection of Claims 12-16 under 35 U.S.C. §103(a) as being unpatentable over Christoffel is respectfully traversed. by virtue of the impropriety of this rejection.

<u>Christoffel is not prior art under 35 U.S.C. §103(a).</u> As explained above, the Examiner has failed to establish Christoffel as a prior art reference. In order for 35 U.S.C. §103(a) to apply, the status of a reference as "prior art" must first be established.

Even if Christoffel were a proper prior art reference, Applicants' claims are patentably distinguishable from the Christoffel reference.

Contrary to the Examiner's assertion, the claimed pore sizes are not arbitrary or obvious. As explained at page 20, lines 10-17, of the present application, mesh material having the specific range of hole sizes articulated in Claim 12 has been found to be permeable to liquid and fine particulates, such as sand, but substantially impermeable to bowel movement materials. Thus, the claimed pore sizes are of a critical nature. Christoffel fails to disclose or suggest any type of material or garment that is permeable to liquid and fine particulates but is substantially impermeable to bowel movement materials. Because Christoffel fails to disclose or suggest any type of material or garment having such properties, there is no suggestion for a person having ordinary skill in the art to contemplate pore sizes that would provide such properties.

Furthermore, as explained above, Christoffel fails to disclose or suggest a stand-alone disposable swimwear liner to be worn beneath swimwear, particularly a swimwear liner that is substantially free of an absorbent assembly. To the contrary, Christoffel discloses a stand-alone swimsuit garment that may be worn *over* an absorbent garment, thereby teaching away from the concept of a swimwear liner.

For at least the reasons given above, Applicants respectfully submit that the teachings of Christoffel fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**Conclusion**

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

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Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,

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